The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IAN JORDAN, a Washington resident, on behalf of a plaintiff's class consisting of himself and all other persons similarly situated and unknown, Plaintiff, v. THE CITY OF LYNNWOOD, a Washington municipal corporation, THE CITY OF LYNNWOOD POLICE DEPARTMENT, NICOLA SMITH, the Mayor of the City of Lynnwood in her official and personal capacity, and TOM DAVIS, Chief of Police of the City of Lynnwood in his official and personal capacity. Defendants.	NO. **17-309** MOTION TO DISMISS DEFENDANT CITY OF LYNNWOOD NOTE ON MOTION CALENDAR JUNE 2, 2017 ORAL ARGUMENT REQUESTED

Under Federal Rules of Federal Procedure 12(b)(1) and 12(b)(6), Defendant City of Lynnwood moves to dismiss this lawsuit with prejudice. Counsel undersigned has consulted with Plaintiff's counsel prior to filing this motion.

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INTRODUCTION

1. Plaintiffs' Proposed Class-action Lawsuit for Red-Light Runners.

The Plaintiffs are red-light runners. After their violations were captured on video through the City's Automated Traffic System ("ATS" or "photo-red system"), each of the plaintiffs received a Notice of Infraction and paid a civil fine. They propose a class action against the City of Lynnwood consisting of similar individuals who were caught running red lights and they demand a refund of their fines, injunctive relief, and a declaratory judgment.

The Plaintiffs argue that they are entitled to this relief because, according to them, if the City of Lynnwood was not in strict compliance with each technical requirement in the statute enabling the use of photo-red systems, then it could not lawfully use the photo-red system when it caught them running red lights. Plaintiffs assert that the City was out of compliance because:

1) During the period from June 2014 – October 2016, the City did not update its web site with data that is required by the enabling statute, RCW 46.63.170(a). (Doc. #10 at 12.)

2) The statute restricts the use of photo-red cameras to certain locations, including "intersections of two arterials…". RCW 46.63.170(b). Plaintiffs allege that the City is violating this restriction because it has a photo-red system at the intersection of 196th St. SW and 36th Ave W which is "an intersection between one city arterial road, a U.S. freeway on-ramp, and a second arterial road . . ." (Doc. #10 at 13.)

By penalizing them for running red lights, Plaintiffs argue that the City violated their due process rights under federal and state law and committed state-law torts against them.

2. The Term "Intersection" Is Defined Under Washington Law.

At the outset, Plaintiffs' incorrect notion that an intersection is not formed where two arterial roads meet, if a highway on-ramp also connects at the intersection, should be corrected.

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This point is squarely addressed by Washington statute and case law. Washington statute defines "intersection area" as follows:

> (1) "Intersection area" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none then the lateral boundary lines of the roadways of **two or more highways which join** one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways **joining at any other angle** may come in conflict.

RCW 46.04.220(1) (emphasis added.) The statute says "join," as opposed to "cross." This definition of "intersection" is settled law in Washington. *Gile v. Nielsen* 20 Wash.2d 1, 145 P.2d 288 (1944) (Prolongation of lateral roadway boundary lines of highway which ran into, but did not cross, another highway was "intersection area" within meaning of statute). Thus, taking the facts alleged as true, the intersection where 196th St. SW meets up with 36th Ave W constitutes an intersection of two arterial roads under Washington law, and satisfies RCW 46.63.170(b).

3. Each Plaintiff Has Been Adjudicated As Guilty of Violating the Law.

It should also be noted that each of the proposed class-representatives paid the civil fine for their Notice of Infractions, and that this constitutes a final judgment. (Doc. #10 ¶ 4 – 6); *see* Infraction Rules of Courts of Limited Jurisdiction ("IRLJ") 2.4(b)(1) ("A person may respond to a notice of infraction by . . . [p]aying the amount of the monetary penalty in accordance with applicable law, in which case the court shall enter a judgment that the defendant has committed the infraction[.]"); RCW 46.63.060(1) ("A notice of traffic infraction represents a determination that an infraction has been committed. The determination will be final unless contested . . . ."). Pursuant to statute, they each had the right to appeal to the Superior Court. IRLJ 5.1; RCW 46.63.090(a). None of them chose to do so.

ARGUMENT

Plaintiffs' federal claims should be dismissed with prejudice for numerous reasons, including that this Court lacks jurisdiction to hear an appeal from a state municipal-court judgment. Plaintiffs' state law claims are self-defeating and fail on the merits. As such, if the

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Court dismisses the federal claims on jurisdictional grounds, the City respectfully urges the Court to also dismiss the state law claims on the merits, rather than allow Plaintiff to engage in a wasteful and futile second round of litigation in the state courts.

I. Federal Claims.

A. This Court Lacks Jurisdiction Under the *Rooker-Feldman* Doctrine.

"Disappointed state court litigants sometimes attempt to overturn state court rulings in federal court § 1983 actions." 1 Martin A. Schwartz, Section 1983 Litigation § 1.07[B] (4th ed. 2003). "This endeavor is frequently doomed to failure." *Id*. This is because under the *Rooker–Feldman* doctrine, lower federal courts do not have subject matter jurisdiction to conduct appellate review of state court proceedings. *Rooker v. Fidelity Trust Co*., 263 U.S. 413, 416, 44 S.Ct. 149, 68 L.Ed. 362 (1923); *D.C. Ct.App. v. Feldman*, 460 U.S. 462, 482, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). The doctrine applies not only to claims that were actually raised before the state court, but also to claims that are "inextricably intertwined" with state court determinations. *Feldman*, 460 U.S. at 483 n. 16, 103 S.Ct. 1303; *see also Noel v. Hall*, 341 F.3d 1148 (9th Cir. 2003). *Rooker–Feldman* requires a party seeking review of a state court judgment to pursue relief through the state court system and ultimately to the United States Supreme Court. *See* 28 U.S.C. § 1257; *Rooker*, 263 U.S. at 416, 44 S.Ct. 149; *Feldman*, 460 U.S. at 476, 103 S.Ct. 1303. The doctrine stems in part from a recognition of the fact that "a decision by a state court, however erroneous, is not itself a violation of the Constitution actionable in federal court." *Homola v. McNamara*, 59 F.3d 647, 650 (7th Cir. 1995).

In this circuit, the *Rooker–Feldman* doctrine has been held to restrict a federal district court from exercising "appellate review over final state court judgments" whether the new case is styled as a direct appeal or constitutes the de facto equivalent. *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012); *Henrichs v. Valley View Dev*., 474 F.3d 609, 613 (9th Cir. 2007). The doctrine bars jurisdiction when: (1) a "plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court," and (2) "seeks relief from a state court judgment based on that decision." *Noel v. Hall*, 341 F.3d 1148, 1155 (9th Cir. 2003). Even a constitutional claim is

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barred if it is an attempted appeal of a final state court judgment. *Cooper*, 704 F.3d at 781; *Worldwide Church of God v. McNair*, 805 F.2d 888, 891 (9th Cir.1986).

The *Rooker-Feldman* doctrine has been applied to many similar cases in which state-court litigants sought to "make a federal case" out of their parking tickets or similar civil fines. *Normandeua v. City of Phoenix*, 516 F.Supp.2d 1054 (D. Arizona 2005) (traffic tickets claim barred under doctrine); *Van Harken*, 103 F.3d 1346 (7th Cir. 1997) (parking tickets process). The doctrine has often been applied in this circuit and by this Court. *Holst v. City of Portland*, 152 Fed.Appx. 588 (9th Cir. 2005) (affirming district court dismissal); *Jenkins v. Washington*; 46 F.Supp.3d 1110 (W.D. Washington 2014) (applying doctrine).

Plaintiffs' purported due process claim is, in both form and substance, a de facto appeal of the state-court proceedings of which they complain. Plaintiffs allege that they each received a Notice of Infraction from the City of Lynnwood and paid a fine to the City. (Doc #10 ¶¶ 4 – 6). Pursuant to state law, they each had the ability to appeal their judgment to the state trial court. None of them did. Instead, they seek an order from this Court requiring the City of Lynnwood to reimburse them for the amount they paid as a fine. They request: "[R]efunds to individual drivers who have paid Notice of Infraction amounts to the City of Lynnwood.. . ." (*Id.* at p. 11). Such an order would have the effect of overturning the state-court judgment. This is precisely the type of collateral attack on a state-court judgment that the *Rooker-Feldman* doctrine prohibits. Likewise, Plaintiffs' request for a declaratory judgment that the City violated RCW 46.63.170 is nothing more than a collateral attack on a state-court order.

Some discussion of Washington's law pertaining to notices of infractions is appropriate here. Infractions for photo-red violations are treated the same as parking tickets. RCW 46.63.170(2). As such, contested camera-detected infractions are governed by the Washington Infraction Rules for Courts of Limited Jurisdiction (IRLJ) and require adjudication exclusively in Municipal Court. Under RCW 7.80.010, "[i]nfraction jurisdiction resides exclusively in the district and municipal courts, *i.e.*, courts of limited jurisdiction." *Post v. Tacoma*, 167 Wn.2d 300, 311, 217 P.3d 1179 (2009) (emphasis added); *City of Seattle v. McCready*, 123 Wn.2d 260,

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276-77,868 P.2d 134 (1994) (challenge to conduct that is "designed to enforce municipal ordinances" was subject to the exclusive jurisdiction of the municipal courts.)

After their cases were adjudicated in Municipal Court, the plaintiffs could either appeal to Superior Court pursuant to RCW 46.63.090(a), or file a motion in the to vacate their judgments in the municipal court pursuant to IRLJ 6.7(a). *Doe v. Fife Mun. Court*, 74 Wn. App. 444, 448, 874 P.2d 182, 184 (1994) (claim for costs unlawfully imposed by municipal court costs could not be recovered through a new superior court lawsuit; *Id*. at 451-53.) The Washington Court of Appeals has made clear that filing a new suit on a class-wide basis is not the proper way to appeal a Municipal Court judgment:

> The Does . . . argue that the district and municipal courts do not have jurisdiction to hear class action suits, award "money-had-and received" damages or provide injunctive relief in this case. We reject these arguments. We see no barrier to a party obtaining effective relief, even in the absence of a class action suit. The mere fact that the Does might be unable to maintain a class action suit does not preclude their ability to recover the overpaid costs. Indeed, the procedure each of the Does would have to follow to obtain relief is quite simple. We are also not persuaded by the Does argument that the district and municipal courts will be overwhelmed with litigants.

Doe, 74 Wn. App. at 454-55. While Plaintiffs may not like the State of Washington's procedural requirements, they cannot simply ignore them. One of the reasons for the *Rooker-Feldman* doctrine is to discourage precisely the type of forum-shopping that Plaintiffs are attempting here. The doctrine serves interests of federalism, efficiency, finality, full faith and credit, and comity. Under that doctrine, the Court should rebuff Plaintiffs' attempt to ignore the State of Washington's judicial process for overturning their modest traffic fines in Municipal Court. The federal courts created in Article III of the U.S Constitution are not uber-municipal courts where red-light runners may appeal their traffic fines.

B. Plaintiffs Lack Article III Standing.

Even if Plaintiffs could avoid the *Rooker-Feldman* doctrine, their lawsuit should be dismissed because they lack standing. Although Plaintiffs bear the burden of establishing standing to bring a claim in federal court, on the face of their First Amended Complaint, they

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establish that they have suffered no injury related to any constitutional violation committed by the Defendants, and lack standing. To begin with, Plaintiffs lack any protected interest in running red lights. *See similarly, Bell v. Redflex Traffic Sys., Inc.*, 374 F. App'x 518, 520-21 (5th Cir. 2010) (dismissed for lack of standing); *Jadeja v. Redflex Traffic Sys., Inc.*, 764 F. Supp. 2d 1192, 1196 (N.D. Cal. 2011) ("Plaintiff, however, cannot establish standing by alleging that Menlo Park fined him for running a red light, because he does not have a legally protected interest to break the law by running red lights."); *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1093 (10th Cir. 2006) ("[A] person complaining that government action will make his criminal activity more difficult lacks standing because his interest is not legally protected.") (internal quotation marks omitted).

Second, even if they had a legally protected interest, Plaintiffs' criticism that the City of Lynnwood did not strictly comply with a state statute has no causal connection to their injury. To establish Article III standing a plaintiff must allege an injury that is both "concrete" and "particularized." The Supreme Court recently emphasized that plaintiffs must be held to their burden of pleading a plausible claim of "concrete" injury caused by the defendant, and a mere technical violation of an ordinance with no causally-connected injury does not suffice. In *Spokeo, Inc. v. Robins,* 136 S.Ct. 1540 (2016), the Plaintiff complained that Spokeo, a website operator that publishes credit profiles, had published inaccurate information about him in violation of the Fair Credit Reporting Act and purported to represent a class of similarly-situated plaintiffs. In fact, Spokeo had bestowed upon Mr. Robins a more positive credit profile than he actually enjoyed. Its violation of the statute was thus purely technical and had caused him no harm. The Supreme Court held that Article III standing requires a concrete injury even in the context of a statutory violation. A plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Id*. at 1547 (citations omitted). A bare procedural violation of the FCRA without any concrete harm would not satisfy Article III's injury-in-fact requirement. "[D]eprivation of a procedural right without some concrete interest that is affected by the

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deprivation ... is insufficient to create Article III standing." *Id*. at 1549 citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). Although it might violate the letter of the law, the Court observed that "[a] violation of one of the FCRA's procedural requirements may result in no harm," in which case, there would be no standing. *Id*. at 1550.

Here, Plaintiffs' theory is similarly based on a technical failure to comply with a state statute that bears to connection to any concrete injury. The Plaintiffs admit that they ran a red light in violation of state law. At the time that they did so, the City of Lynnwood did not have current statistical data on its website about the intersections with ATS cameras. This technical lapse was cured in October 2016 and January 2017. (Dkt #10 at ¶ 12). Plaintiff Ian Jordan also complains that the intersection where he ran a red light was not, in his opinion, an intersection of two arterials because one of the two arterial streets continues onto Interstate 5. (*Id*. ¶ 16). This argument, even if it had merit, has no connection to Jordans' injury.

Like the Plaintiff in *Spokeo*, the plaintiffs here seek to manufacture standing based on alleged technical violations of a statute that is unconnected to their alleged injury. They paid a modest fine for the serious offense of running a red light, which they admit to and which was established by the judgment against them. Plaintiffs lack standing because: 1) they have suffered no concrete injury, and 2) to the extent that their fines constitute their alleged injury, the alleged technical violations of RCW 46.63.170 are not causally connected to that "injury"—they did not cause them to run a red light or prevent them from challenging their fines. Their claim may be helpfully contrasted with *Leder v. American Traffic Solutions, Inc.*, 81 F. Supp. 3d 211 (E.D.N.Y. 2015), in which the plaintiff alleged that Nassau County had actually *caused* him to run a red light by shortening the time for the lights to cycle in violation of state statute. *Leder*, 81 F. Supp. 3d at 221.

Plaintiffs cannot establish any concrete injury that is fairly traceable to the alleged technical statutory failings of the City of Lynnwood. Without a causal relationship such as was alleged in *Leder*, their claim is of the variety of bare procedural violation identified by the

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Supreme Court in *Spokeo*. There is no Article III standing for a claim based on a technical violation of a statute that results in no injury.

C. Res Judicata and Collateral Estoppel.

The doctrine of *res judicata*, or claim preclusion, is connected to the *Rooker-Feldman* doctrine in many ways. It prohibits lawsuits on any claims that were raised or could have been raised in a prior action. *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir.2001). It applies when there is: (1) an identity of claims; (2) a final judgment on the merits; and (3) identity or privity between parties. *Id.* Identity of claims encompasses claims that were raised *or could have been raised*. Here, each of the Plaintiffs could have challenged the validity of the Notice of Infraction in municipal court on the same grounds they now raise and could have further appealed through the state-court system. See RCW 46.63.070(3) (explaining procedures for contesting NOIs). Indeed, Plaintiff Jordan did so. (Correa Dec., Exhibit A—transcript of Jordan hearing.) By operation of law, when each of the Plaintiffs paid their NOI, the determination of their violation became a final judgment establishing their guilt. RCW 46.63.060(1).

It is not surprising that other courts have rejected class actions such as this on *res judicata* grounds. *See, e.g., Kovach v. D.C.,* 805 A.2d 957, 962 (D.C. 2002) (dismissing class action based on safety camera tickets); *see also Carroll v. City of Cleveland*, 522 F. App'x 299, 307 (6th Cir. 2013). ("Because payment of the fines levied in Appellants' citations, and acceptance of that payment by the City, was a final decision, . . . and this suit arises out of the same common nucleus of operative fact as the traffic citations, the district court's decision to dismiss was correct."); *cf. Idris v. City of Chicago*, 552 F.3d 564, 565 (7th Cir. 2009) (noting that where claim preclusion was not raised in multi-plaintiff suit brought against Chicago for its issuing tickets for violations detected by red-light cameras, "all plaintiffs had an opportunity to present their contentions in the administrative process . . . the City might well have had a good argument that claim preclusion bars this litigation" (Easterbrook, J.)).

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It is anticipated that Plaintiffs may argue that *res judicata* should not apply because they seek to raise new claims of "system-wide" violations that relate to their traffic citations that could not be argued in a Municipal Court. *Todd v. City of Auburn*, 2010 WL 774135 (2010) *citing Orwick v. City of Seattle*, 103 Wn.2d 249,692 P.2d 793 (1984). This argument only goes so far – it does not overcome the *Rooker-Feldman* doctrine or cure Plaintiffs' lack of standing. Moreover, even if *res judicata* did not apply against all claims that could have been brought, the doctrine of collateral estoppel bars the Plaintiffs' claims to the extent that there is a final judgment adjudicating their guilt and thus, there is essentially nothing left to adjudicate. *See Kovach v. District of Columbia*, 805 A.2d 957, 962 (2002), *citing Patton v. Klein*, 746 A.2d 866, 870 (D.C.1999) ("Even where *res judicata* is inapplicable, collateral estoppel may bar relitigation of the issues determined in a prior action.") Collateral estoppel "restricts a party in certain circumstances from relitigating issues or facts actually litigated and necessarily decided in an earlier proceeding." *Ringgold v. District of Columbia Dep't of Employment Servs*., 531 A.2d 241, 243 n. 3 (D.C.1987) (citations omitted). Here, the Plaintiffs have been found guilty of running red lights in violation of law. Payment of fines in the municipal court operates as a judgment on the merits and an admission of fault. The same will be true for every member of the proposed class, which consists of red-light runners who paid their fines.

D. Plaintiffs Fail to State a Claim for Violation of Due Process.

If the Court accepts jurisdiction and finds the Plaintiffs can establish standing, it should examine the sufficiency of their pleadings and find that they fail to state any federal *or* state-law claims for violation of due process. The Washington Constitution's due process protections are coextensive with the Fourteenth Amendment to the federal constitution. *In re Estate of Hambleton*, 181 Wash.2d 802, 335 P.3d 398, *cert. denied* 136 S.Ct. 318, 193 L.Ed.2d 227 (2014). Plaintiffs purport to bring claims under 42 U.S.C. § 1983 for violation of both substantive and procedural due process and analogous claims under the Washington State Constitution. However, the First Amended Complaint does not contain facts that, if proven,

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would establish any such claim. (This issue was also briefed in the City's Motion to Dismiss Individual Defendants Smith and Lewis, and that argument is incorporated here by reference.)

1. Substantive due process.

Plaintiffs do not attack the constitutionality of the statute that authorizes photo-red cameras. Rather, they argue that the City had no authority to issue any Notice of Infraction through its photo-red system: "When a city uses its police power without authorization, to impose criminal sanctions, fine them and take their money, this violates the constitutional due process rights of those citizens." (Dkt#10 at ¶ 11). Formulaic pleading of the elements of a claim is not enough to state a claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). In probing the pleadings on this motion to dismiss, this Court should consider whether the factual allegations show a plausible claim for a violation of due process. They do not.

To begin with, there are no criminal sanctions at issue in this case—only civil fines of up to $124. (RCW 46.63.170(2); City of Lynnwood Mun. Code 11.18.050.) These civil fines do not implicate a fundamental constitutional right. *See Yagman v. Garcetti*, No. 14-56223, --- F.3d ---- , 2017 WL 242562 *5 (2017) *citing Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1058 (9th Cir. 2012) ("[G]overnment action that 'affects only economic interests' does not implicate fundamental rights.") In *Yagman*, the appellant argued that the defendant city's procedure for parking tickets violated substantive due process. In rejecting that argument, the Ninth Circuit wrote:

> [T]o establish a substantive due process violation based on the City's procedures, Yagman must show the procedures are "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." The City's procedures, however, are "presumed valid, and this presumption is overcome only by a clear showing of arbitrariness and irrationality." This is an "exceedingly high burden." Because Yagman has not alleged conduct so "egregious" as to "amount to an abuse of power lacking any reasonable justification in the service of a legitimate governmental objective," his substantive due process challenge fails.

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Yagman v. Garcetti, No. 14-56223, 2017 WL 242562, at *5 (9th Cir. Jan. 20, 2017) (citations omitted).

Here, the City has an undeniable and substantial public safety interest in penalizing those who run red lights. Thus, even if it was not in strict compliance with a state statute during a period of time when it employed its photo-red system, this conduct cannot be said to have been "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." In contrast, Plaintiffs have no legally protected interest in breaking the law. They also do not have any fundamental constitutional right to have statistical data published about the intersections where they ran the red lights, nor do they enjoy a fundamental constitutional right to only have a photo-red ticket at certain types of intersections. Under the facts as alleged, due process is not offended and Plaintiffs do not state a claim.

As was discussed at the outset of this motion, Plaintiffs are mistaken in their belief that one of the intersections did not comply with state law. Thus, there can be no due process violation flowing from the configuration of the intersection of 196th St. SW and 36th Ave W. As for the other alleged due process violation, the City admits that there was a lapse in posting data on its website. However, taking both of the alleged violations of statute as true, Plaintiffs yet fail to establish a violation of federal or state substantive due process. The Ninth Circuit's discussion in *Samson v. City of Bainbridge Island* is on point:

> Finally, the Samsons argue that the Washington Supreme Court's judgment that the moratorium violated the state constitution suffices to establish that Bainbridge is liable under § 1983. It is axiomatic, however, that not every violation of state law amounts to an infringement of constitutional rights. "Unless there is a breach of constitutional rights, ... § 1983 does not provide redress in federal court for violations of state law.". . .

Samson v. City of Bainbridge Island, 683 F.3d 1051, 1058 (9th Cir. 2012) (citations omitted). Here, the alleged technical violations of state law, if proven, do not establish any infringement of a fundamental constitutional right and cannot support a claim under 42 U.S.C. 1983.

Lastly, Plaintiffs do not and cannot allege any fact to show that the City's lapse in posting data or its determination of what constituted an appropriate intersection was an official

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policy or custom of the City that deprived them of a fundamental constitutional right. To establish their substantive due process claim, the Plaintiffs must show that: 1) an official policy or custom existed; 2) it was attributable to the municipal defendant; 3) a constitutional deprivation occurred; 4) caused by the custom or policy. *Monell v. Department of Social Services*, 436 U.S. 658 (1978). Courts have categorized different ways that the policy or custom requirement can be met such as:

1. Proof that a city employee committed the alleged constitutional violation pursuant to a formal governmental policy or a longstanding practice or custom.

2. Proof that the individual who committed the constitutional tort was an official with final policy making authority and that the challenged act constituted an official government policy.

3. Proof that an official with final-policy making authority ratified a subordinate's unconstitutional decision or action.

Gillete v. Delmore, 979 F2d 1342, 1346 (9th Cir. 1992). None of those bases exist in this case. Rather, Plaintiffs allege that the actions of the City were negligent. (Doc. #10 ¶ 30.) Mere negligence does not support a claim under 42 USC 1983. "If it was once not clear, it is now beyond question that § 1983 requires proof of intentional, not merely negligent, acts depriving a party of his constitutional rights." *Mangiaracina v. Penzone*, 849 F.3d 1191, 1199 (9th Cir. 2017). Thus, they fall short of showing any policy or custom.

As in *Yagman* and *Samson*, the Plaintiffs are attempting to use alleged technical violations of a state statute to manufacture a non-existent claim for the violation of fundamental constitutional rights. Plaintiffs hope to thereby overturn their traffic tickets—civil fines that affect only their personal economic interests and do not implicate fundamental constitutional rights. This Court, as in *Yagman* and *Samson*, should dismiss Plaintiffs federal and state substantive due process claims on the merits.

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2. Procedural Due Process.

To prevail on a procedural due process claim under Section 1983, a plaintiff must establish: "(1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the government; and (3) lack of process." *Wright v. Riveland*, 219 F.3d 905, 913 (9th Cir. 2000) (internal modifications omitted), *quoting Portman v. County of Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993). The determination of what procedures satisfy due process in a given situation depends upon an analysis using the three-part balancing test outlined in *Mathews v. Eldridge*, 424 U.S. 319, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976); *Orloff v. Cleland*, 708 F.2d 372, 378-79 (9th Cir. 1983) (parallel citations omitted). In *Mathews*, the Supreme Court stated:

> Identification of the specific dictates of due process generally requires consideration of three distinct factors. First, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

Mathews, 424 U.S. at 335.

A very similar case to the one at hand was considered by the Ninth Circuit in a case arising from a photo-red ticket in Portland, Oregon. *Holst v. City of Portland*, 152 Fed.Appx. 588 (2005). Holst appealed from the district court's order dismissing his 42 U.S.C. § 1983 action against the City of Portland and others, challenging the constitutionality of his conviction for a photo-radar speeding violation. Affirming, the Ninth Circuit observed that: "Portland's photo-radar procedures comport with Oregon law, which guarantees a hearing, provides a statutory defense when traffic control devices are improperly installed, gives notice to violators that a police officer can testify, and allows for discovery of evidence." *Id.* at 589, *citing Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1110 (9th Cir. 2005) (civil sanctions require only adequate notice and an opportunity to be heard); *see similarly DeVita v. District of Columbia*, 74 A.3d 714 (2013) (adequate due process provided for civil fine imposed under photo-red system.)

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In this case, as in *Holst*, the Plaintiffs received notice and had the opportunity to be heard. Plaintiff Jordan admits that he sought mitigation of his citation in municipal court. (Doc. #10 at 16). In addition to seeking mitigation, the Plaintiffs each could have contested the Notice of Infraction and appealed to the state superior court. Rule 5.1, Washington IRLJ, provides that "a defendant may appeal a judgment entered after a contested hearing finding that the defendant has committed the infraction." Rule 5.2 specifies the process for such an appeal to the Superior Court. An appeal from a court of limited jurisdiction is governed by the Rules for Appeal of Decisions of Courts of Limited Jurisdiction. In addition, each Plaintiff could have made a motion "to waive or suspend a fine, or to convert a penalty to community restitution, or to vacate a judgment . . ." following the process set out in CRLJ 60(b). *See* IRLJ 6.7.

The Plaintiffs cannot seriously assert that they were denied notice and an opportunity to be heard. As the court did in *Holst*, this Court should dismiss Plaintiffs procedural due process claim.

II. State Law Claims.

A. This Court Should Dismiss the State Law Claims With Prejudice.

When a federal claim is dismissed early in the case, federal courts often dismiss the state law claims without prejudice. *Reynolds the County of San Diego*, 84 F 3d 1162, 1171 (9th Cir. 1996). But this is not mandatory. A federal trial court has discretion to continue exercise supplemental jurisdiction over state claims under 28 USC §1367 (C). *See Executive Software No. America Inc. the United States District Court*, 24 F.3d 1545, 1556 (9th Cir. 1994). The decision to retain jurisdiction over state law claims is informed by values "of economy, convenience, fairness, and comity." *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir.), *supplemented*, 121 F.3d 714 (9th Cir. 1997), *as amended* (Oct. 1, 1997).

In this case, the Court should dismiss the state law claims and the federal claims together because they are intertwined and are equally lacking in merit. *See, e.g.*, *Coe v. County of Cook*, 162 F3d 491, 496 (7th Cir. 1998) (dismissal avoids "a further, and futile, around of litigation in

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the state courts.”). There are numerous reasons—doctrinal, procedural, and substantive—that compel dismissal of Plaintiffs’ state-law claims.

B. Violation of Washington Constitution (Due Process)

The Washington Constitution does not afford broader due process protection than the Fourteenth Amendment to the federal constitution. *In re Estate of Hambleton*, 181 Wash.2d 802, 335 P.3d 398, certiorari denied 136 S.Ct. 318, 193 L.Ed.2d 227 (2014). Thus, for the same reasons that the Court should dismiss the federal due process claims, it should also dismiss the state due process claims.

Plaintiffs allege that during any period when the City of Lynnwood was not in strict compliance with RCW 46.63.170, it could not employ its photo-red system without violating Article 1, Section 3 of the Washington Constitution. That section states: “No person shall be deprived of life, liberty, or property, without due process of law.” Wash. Const. art. I, § 3. As explained above: 1) the Plaintiffs have no protected interest in running red lights with impunity; 2) the civil fines at issue do not implicate a fundamental constitutional right; 3) the facts alleged do not show any action that is “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare.” *Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1058 (9th Cir. 2012) (“[G]overnment action that ‘affects only economic interests’ does not implicate fundamental rights.”) Plaintiffs thus fail to state a claim for violation of Article 1, Section 3 of the Washington Constitution.

Moreover, Washington law on this subject utterly destroys the heart of Plaintiffs’ claim. The essential argument Plaintiffs make is that their traffic fines should be invalidated due to technical violations of the state’s photo-red enabling statute. However, the Washington Supreme Court has squarely held that mere technical violations do not amount to a violation of due process, nor do they deprive a City of its police power to assess civil penalties for traffic violations. *State v. Storhoff*, 133 Wash.2d 523, 946 P.2d 783 (1997). In *Storhoff*, the plaintiffs sought to overturn the revocation of their driver’s licenses based on the fact that the State of Washington had issued notices that incorrectly stated the deadline for requesting a formal

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license revocation hearing. Unlike the mere economic interests at issue here, it is settled that a driver's license represents an important property interest that cannot be taken without due process. *State v. Dolson*, 138 Wash.2d 773, 776–77, 982 P.2d 100 (1999) (*citing Bell v. Burson*, 402 U.S. 535, 539, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971). Nevertheless, the Washington Supreme Court, *en banc*, held that technical violations of the notice requirement did not invalidate the revocations:

> We are reluctant to excuse the Defendants' serious criminal violations due to a minor procedural error that did not actually prejudice the Defendants . . . We hold that, in the absence of actual prejudice to the Defendants, the incorrect DOL notices do not invalidate the revocation of the Defendants' licenses, or otherwise preclude their prosecution for driving while license revoked.

Storhoff, 133 Wash 2d. at 532, 946 P.2d at 788. Like the plaintiffs in *Storhoff*, the Plaintiffs here point to alleged technical violations that did not prejudice them. Thus, no due process claim—either procedural or substantive—may be based on the City's admitted lapse in posting data or its alleged (but legally erroneous) violation of the "two arterial" restriction.

The facts alleged simply fail to rise to the level of any violation of a due process right heretofore recognized in Washington. Substantive due process protects against arbitrary and capricious government action. *Carlson v. San Juan County*, 183 Wash.App. 354, 333 P.3d 511 (2014). Substantive due process is violated if an executive action shocks a court's conscience; negligence is not sufficient. *Braam ex rel. Braam v. State* (2003) 150 Wash.2d 689, 81 P.3d 851. However, a City's interpretation of its ordinances, even when it results in the mistaken and wrongful issuance of a notice of violation, is not presumptively unreasonable, and thus generally cannot violate substantive due process rights. *Brown v. City of Seattle* 117 Wash.App. 781, 72 P.3d 764, corrected (2003). Rather, to determine whether an action or regulation violates substantive due process, a court must ask whether it is aimed at achieving legitimate public purpose, whether it uses means that are reasonably necessary to achieve that purpose, and whether it is unduly oppressive. *Rivett v. City of Tacoma*, 123 Wash.2d 573, 870 P.2d 299 (1994). Thus, even if Plaintiffs had a recognized interest that implicated due process, which

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they do not, they cannot state a claim of due process violations under Washington law based on the technical violations that they allege.

C. Conversion, Replevin, and the Voluntary Payment Doctrine.

Based on their erroneous notion that the City of Lynnwood lacked authority to issue Notices of Infraction, Plaintiffs attempt to allege the state-law tort claim of conversion and demand replevin. This claim fails under *Storhoff* because the alleged technical violations did not prejudice the Plaintiffs or invalidate their Notices of Infraction. *Storhoff*, 133 Wash 2d. at 532, 946 P.2d at 788. ("[I]n the absence of actual prejudice to the Defendants, the incorrect DOL notices do not invalidate the revocation of the Defendants' licenses, or otherwise preclude their prosecution for driving while license revoked.)

Plaintiffs' state-law conversion claim also is precluded due to an affirmative defense known as the "voluntary payment doctrine." The Plaintiffs each voluntarily paid their fines, establishing a binding judgment against them, and this bars their claims for a refund of their fines under the theory of conversion. (Doc. #10 ¶ 26.) The voluntary payment doctrine in Washington holds that: " 'money voluntarily paid under a claim of right to the payment, and with full knowledge of the facts by the person making the payment, cannot be recovered back on the ground that the claim was illegal, or that there was no liability to pay in the first instance.' " *Indoor Billboard/Washington, Inc. v. Integra Telecom*, 162 Wash.2d 59, 85 (2007) *quoting Speckert v. Bunker Hill Ariz. Mining Co.*, 6 Wash.2d 39, 52, 106 P.2d 602 (1940) (quoting 21 Ruling Case Law 141–42 (1918)). "Payments are considered involuntarily made under the doctrine if the payor lacked knowledge of the applicable fees or made the payment as a result of fraud, duress, or compulsion." *Davis v. Homecomings Fin., Case No. C05–1466RSL*, 2006 WL 2927701 n3 (W.D.Wash. 2006); *see also Indoor Billboard*, 162 Wash.2d at 85, 170 P.3d 10 (payor must have "full knowledge of the facts").

The voluntary payment doctrine applies with special force in this case. Plaintiff Jordan contested his ticket, argued the same things that he argues here, and then agreed to pay a

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reduced fine of $85 and did not appeal it. (Correa Dec.) Similarly, Plaintiff MacDonald sought mitigation and agreed to pay a reduced fine of only $65. (Id.) The information on which Plaintiffs base their claims now was known to them or discoverable then (*i.e.*, the fact that data on the City web site was not current and the configuration of the intersection where he ran the red light.) The statutory requirements of the photo-red statute are also publicly available and easily discoverable and knowledge of the law may be imputed to Plaintiffs. Jordan argued in his hearing in municipal court about these points before agreeing to pay a reduced fine. As such, any member of the proposed plaintiff class could have asserted the bases for the claim they make here and appealed, instead of voluntarily paying their fine. Under Washington law, such voluntary payment of their fines precludes their claims under state law for a refund of those fines and constitutes an affirmative defense against their tort claim of conversion.

D. Unjust Enrichment.

Plaintiffs allege the equitable claim of unjust enrichment. (Doc. #10 ¶ 26). However, they cannot seek equitable relief where they have both unclean hands and an adequate remedy at law. Plaintiffs' restitution claim must be dismissed.

1. Plaintiffs Have Unclean Hands.

For their unjust enrichment claim, Plaintiffs assert that: "Fundamentally, the City has been wrongfully taking property owned by motorists and converting it to its own use." (Dkt #10 at ¶ 26.) Plaintiffs allege that the City was thereby unjustly enriched and that they seek "replevin." (Id. ¶ 27.)

Plaintiffs' "unjust enrichment" claim fails on the merits because they do not and cannot allege that they are without blame. To the contrary, they admit that they ran red lights and accepted a binding judgment establishing that fact. It is well-established in Washington that a plaintiff with "unclean hands" is not entitled to equitable relief. *See*, *e.g*., *J. L. Cooper*, 9 Wn.2d 45, 71-72, 113 P.2d 845 (1941). This is especially true where, as here, a plaintiff has violated the law in connection with the transaction on which he bases his claim. *Id.*; *see also Income Investors v. Shelton*, 3 Wn.2d 599, 601-02, 101 P.2d 973 (1940) (plaintiff was not entitled to

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equitable relief in light of unlawful misconduct in connection with matter being litigated); *cf. State v. Day*, 161 Wn.2d 889, 895 n.4, 168 P.3d 1265 (2007).

In addition, the Plaintiffs must show that the "enrichment" is also unjust. "[E]nrichment alone will not trigger the doctrine; rather, the enrichment must be unjust under the circumstances and as between the two parties to the transaction." *Cox v. O'Brien*, 150 Wash. App. 24, 37, 206 P.3d 682, 688 (2009). There is no injustice here. There was a lapse in posting data that the City admits. One of the intersections of two arterials includes an on-ramp onto I-5, which is legally permissible under RCW 46.63.170. Neither of these facts made it unlawful, let alone unjust, for red-light runners who were caught on camera to be notified of their infraction and required to pay a fine. Because Plaintiffs have unclean hands and were lawfully cited for their admitted and serious traffic violations, they are not entitled to equitable restitution.

2. Plaintiffs Have An Adequate Remedy At Law.

Plaintiffs' equitable unjust enrichment claim fails for the additional well-established reason that Plaintiffs have an adequate remedy at law. *See Seattle Professional Eng'g Employees Ass'n v. Boeing Co.*, 139 Wn.2d 824, 838-39, 991 P.2d 1126 (2000) (parties with remedy at law under minimum wage act could not pursue equitable remedy of restitution). Where legal relief is available, equitable relief is not. *Id*. As detailed above, Plaintiffs could have challenged the judgments entered against them by appeal or by bringing a motion in Municipal Court. As such, they are not entitled to equitable relief.

E. Wrongful Prosecution and Abuse of Process

Plaintiffs allege that: "[b]y instituting criminal/legal proceedings against citizens without authority under law, Lynnwood committed wrongful prosecution and has engaged in abuse of process." (Doc #10 ¶ 29.) Plaintiffs have not pled facts that if proven would establish a malicious prosecution or an abuse of process claim under Washington law.

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1. Malicious prosecution.

To succeed on an action for malicious prosecution, a plaintiff must establish: (1) that the prosecution claimed to have been malicious was instituted or continued by the defendant; (2) that there was want of probable cause for the institution or continuation of the prosecution; (3) that the proceedings were instituted or continued through malice; (4) that the proceedings terminated on the merits in favor of the plaintiff, or were abandoned; and (5) that the plaintiff suffered injury or damage as a result of the prosecution. *Pardee v. Quinn, No. C16-1028RSM*, 2016 WL 6778780, at *4 (W.D. Wash. Nov. 16, 2016) *citing Hanson v. Snohomish*, 121 Wn.2d 552, 558, 852 P.2d 295 (1993). Washington courts have long held that a conviction, even if subsequently overturned on appeal, is sufficient to defeat any malicious prosecution claim in a subsequent civil action, unless the conviction was obtained by fraud, perjury or other corrupt means. *Hanson*, 121 Wn.2d at 556.

Plaintiffs and their alleged class are individuals who ran red lights and agreed to pay their civil fines in municipal court, thus establishing a final judicial determination on the merits against them pursuant to RCW 46.63.060(1). Plaintiffs admit in their pleadings that they ran red lights and paid a fine for that offense, establishing a judgment against them. They thus admit that they cannot establish the elements of a malicious prosecution claim. The defendants are entitled to judgment on the pleadings, and an order dismissing these meritless claims with prejudice.

2. Abuse of Process.

Actions for abuse of process also are not favored in Washington. *Batten v. Abrams*, 28 Wash.App. 737, 745–46, 626 P.2d 984, review denied, 95 Wash.2d 1033 (1981). The Supreme Court of Washington has said: "In abuse of process cases, the crucial inquiry is whether the judicial system's process, made available to insure the presence of the defendant or his property in court, has been misused to achieve another, inappropriate end." *Gem Trading Co v. Cudahy Corp.*, 92 Wn.2d 956, 963 n.2, 603 P.2d 828 (1979). The essential elements of abuse of process in Washington are: (1) the existence of an ulterior purpose to accomplish an object not within

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the proper scope of the process; and (2) an act in the use of legal process not proper in the regular prosecution of the proceedings. *Sea–Pac Co. v. United Food & Commercial Workers Local Union 44*, 103 Wash.2d 800, 806, 699 P.2d 217 (1985); *Mark v. Williams*, 45 Wash.App. 182, 191, 724 P.2d 428, review denied, 107 Wash.2d 1015 (1986); *Andersen v. Razey*, *No. 35362-4-I*, 1997 WL 144058, at *5 (Wash. Ct. App. Mar. 31, 1997).

By no stretch of the imagination does a claim for that tort lay here. "An action for abuse of process cannot be maintained where the process was employed to perform no other function than that intended by law." *Batten*, 28 Wash.App. at 746, 626 P.2d 984. Here, the Plaintiffs allege that the City issued Notices of Infraction after its photo red system caught them running a red light. The City followed its ordinances and municipal court rules of procedure and assessed the $124 fine provided by law. The process was employed to perform the function intended. Plaintiff's complaint that there was a lapse in a data-posting and that one of the intersections was allegedly non-compliant are not related to the judicial process. They do not allege any improper purpose in the Notice of Infraction proceedings. The defendants are entitled to judgment on the pleadings, and an order dismissing these meritless claims with prejudice.

F. Negligence and the Public Duty Doctrine.

For their negligence claim, Plaintiffs allege generally:

> The City of Lynnwood owes a duty to its citizens, and to citizens who visit the City, to enforce the laws fairly, and within the reasonable boundaries and limits of their own authority. By failing to adequately monitor and comply with the requirements of state law, Lynnwood has breached this duty. This caused significant harm to many citizens, who are entitled to compensation as a result of the City's negligence.

(Dkt #10 ¶ 30). Plaintiffs specifically allege, and the City does not dispute, that there was an inadvertent lapse in reporting data on its website. (Dkt #10 ¶ 11-13).

Washington's requirements that the City publish ATS data on its website and equip only two-arterial intersections with ATS devices, do not create a duty owed by the City to an individual or group of individuals, the breach of which would support a negligence claim. This

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legal precept is known as the Public Duty doctrine. On the face of their pleadings, Plaintiffs implicate the Public Duty Doctrine when they allege that the City "owes a duty to its citizens." The Public Duty Doctrine holds that any duty that a municipality owes to "its citizens" is owed to all of its citizens, collectively, and thus cannot support an individual claim of a breach of duty. *Taylor v. Stevens County*, 111 Wash.2d 159, 759 P.2d 447 (1988).

Under the public duty doctrine, no liability may be imposed for a public official's negligent conduct unless it is shown that the duty breached was owed to the injured person as an individual and was not merely the breach of an obligation owed to the public in general (*i.e.*, a duty to all is a duty to no one). *Id*. at 450; *Fabre v. Town of Ruston*, 321 P.3d 1208 (Wash. Ct. App. Div. 2 2014) (trial court properly dismissed complaint alleging negligence where under public duty doctrine municipality owed no duty); *Dorsch v. City of Tacoma*, 92 Wash. App. 131, 960 P.2d 489 (Div. 2 1998) (city's adoption of regulations did not evidence intent to protect individual workers); *Robb v. City of Seattle*, 176 Wash. 2d 427, 295 P.3d 212 (2013) (duty to all was a duty to none). Plaintiffs allege that the City of Lynnwood owes a duty to all of its citizens and to visitors. If this alleged duty exists, it is subject to the Public Duty Doctrine and under Washington law cannot support a negligence claim. Defendants are entitled to judgment on the pleadings and an order dismissing Plaintiffs' negligence claim with prejudice.

G. No Punitive Damages

Exemplary or punitive damages are not recoverable under Washington law unless expressly authorized by statute. *Grays Harbor County v. Bay City Lumber Co*., 47 Wn.2d 879, 289 P.2d 975 (1955); *Anderson v. Dalton*, 40 Wn.2d 894, 246 P.2d 853, 35 A.L.R.2d 302 (1952). Therefore, Plaintiffs may not be awarded punitive damages for their state law claims against any defendant. Likewise, no punitive damages are permitted against municipalities under Section 1983. *City of Newport v. Fact Concerts, Inc*., 453 U.S. 247, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981). Therefore, Plaintiffs may not be awarded punitive damages for their federal law claims against the City of Lynnwood.

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H. Plaintiffs' Declaratory Judgment Request.

Plaintiffs ask this Court to issue an order declaring that "the Defendants have operated the traffic system illegally and without lawful authority since at least July 1, 2014." (Doc. #10 at ¶ VII). Under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, this Court has discretion to provide such relief under certain conditions: "In a case of actual controversy within its jurisdiction, … any court of the United States … may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). The Supreme Court has emphasized that the statute permits, but does not require, a federal court to issue a declaratory judgment. *Wilton v. Seven Falls Company*, 515 U.S. 277, 286-87 (1995). Plaintiffs seek a declaration that the City of Lynnwood violated RCW 46.63.170 by not strictly complying with two separate provisions of the statute: 1) a requirement to publish data about the ATS-equipped intersections, and 2) placing a traffic camera at an intersection that plaintiffs argue does not comply with the statute.

In the first place, this Court should decline to exercise its wide discretion to grant declaratory relief in this case a party seeking declaratory relief under the statute must present an "actual controversy" in order to satisfy the "case or controversy" requirement of Article III, and Plaintiffs cannot do so. 28 U.S.C. § 2201(a); *Aetna Life Insurance Company v. Haworth*, 300 U.S. 227, 239 (1937) (The case must involve a controversy that is substantial and concrete.); *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540 (2016). For the reasons stated above, the Plaintiffs and alleged class of red light runners have not alleged facts, which if proven, would show they have suffered a concrete injury causally related to the alleged violations of RCW 46.63.170.

Second, this Court may properly, in the exercise of its wide discretion, determine that it should not grant declaratory relief in this case. All of the federal-law claims and state-law claims may be disposed of on the merits without rendering a decision on Plaintiff's theories about the Washington statute at issue. The Court's exercise of discretion should be informed by a number of prudential factors, including: (1) considerations of practicality and efficient judicial administration; (2) the functions and limitations of the federal judicial power; (3) traditional

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principles of equity, comity, and federalism; (4) Eleventh Amendment and other constitutional concerns; and (5) the public interest. *Green v. Mansour*, 474 U.S. 64, 72-74 (1985); *Public Service Commission of Utah v. Wycoff Company*, 344 U.S. 237, 243-47 (1952) ("It is the state courts which have the first and the last word as to the meaning of state statutes and whether a particular order is within the legislative terms of reference so as to make it the action of the State.")

Third, Plaintiffs admit in their pleadings that part of their claim has become moot. After a lapse in publishing data about the photo-red intersections, the City updated its website and is now compliant with RCW 46.63.170. Plaintiffs allege: "Lynnwood was completely out of compliance with the requirement for annual reporting between June, 2014 and October, 2016, and it did not completely come into compliance until January, 2017." (Doc. #10 at 12.) The City admits that it did not publish data until 2016. For the reasons stated above, this fact does not give rise to any claim against the city. This Court should thus dismiss that part of Plaintiffs' request for declaratory judgment as moot.

The only remaining basis for which Plaintiffs could request declaratory relief is their assertion that the intersection of 196th St. SW and 36th Ave W does not comply with the statute because: "it is an intersection between **one city arterial road**, a U.S. freeway on-ramp, **and a second arterial road** . . ." (Doc. #10 at 13) (emphasis added). For reasons stated above, this allegation is self-defeating because it admits the two arterial roads come together at this intersection which is the only thing required by RCW 46.63.170(b).

Conclusion.

For the foregoing reasoning an authority, the City of Lynwood respectfully urges the Court to enter its order dismissing Plaintiffs' First Amended Complaint with prejudice.

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DATED this 4th day of May, 2017.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, I caused the original of the foregoing document to be electronically filed with the Court, with a copy to be served via email on the following counsel of record:

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DATED this 4th day of May, 2017.

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